IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 767 OF 2006

1. The District Superintendent,
   Agriculture Officer, Wardha.
2. The Deputy Director of Horticulture,
   Wardha, District – Wardha.
3. Horticulture Officer, Taluka Falrop Vatika,
   Talegaon Shamji Pant,
   Tah. Ashti, Dist. Wardha.
4. Sub-Divisional Agriculture Officer,
   Arvi, Tahsil & District – Wardha.
5. Joint Director of Agriculture,
   Nagpur Division, Nagpur.
6. The Commissioner of Agriculture,
   Agriculture Commissionerate,
   Shivaji Nagar, M.S., Pune.
7. The Secretary, Agriculture,
   Animal Husbandry, Dairy Development
   and Fisheries Department,
   Mantralaya, Mumbai. ... PETITIONERS

Versus

Dhanraj Vaikunthrao Pachghare,
aged 27 years, occupation – Service,
r/o Talegaon Shamji Pant,
Tahsil – Ashti, District – Wardha. ... RESPONDENT

Shri P.D. Kale, AGP for the petitioners.
Shri M.B. Nasare, Advocate for the respondent.

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CORAM : B.P. DHARMADHIKARI, J.
DECEMBER 01, 2006.

ORAL JUDGMENT :

Considering the nature of controversy, Rule is made returnable forthwith and heard finally at the stage of admission itself with the consent of Shri Kale, learned AGP for the petitioner and Shri Nasare, learned counsel for the respondent.

2. The limited grievance made by the learned Assistant Government Pleader is that though there is existing rule for recruitment of agriculture labourers, casual labourers could be given appointment after vacancies are available and are filled in. It is contended that the vacancies are not in existence and the Industrial Court has not considered this evidence at all.

3. Shri Nasare, learned counsel for the respondent contends that at the time when the ULP Complaint was filed by the respondent, 32 vacancies were in existence. Before the Industrial Court it was a specific case of the respondent that juniors were given preference and were accommodated and regularised as per 1978 Rules. He contends that unfortunately

the Industrial Court has not recorded any finding about undue preference given to juniors by the petitioner.

4. In the circumstances, it is apparent that the Industrial Court could have ordered benefit of 1978 Rules only if the petitioners were shown to have filled in the post before filing of ULP Complaint. That consideration is absent. Shri Nasare states that the specific stand of the respondent before the Industrial Court was that they are superseded by giving undue preference to the juniors whose names are also mentioned by the respondent in the pleadings and this stand of the respondent was overlooked by the Industrial Court. If the juniors have been superseded claim of respondent should have been considered by the Industrial Court and relief could have been given to the respondent also.

5. Thus, I find that there is failure on the part of the Industrial Court to look into this aspect of the matter. In the circumstances, the impugned order of Industrial Court is

quashed and set aside. The Industrial Court shall decide the ULP complaint afresh after giving due opportunity to the parties in the matter. The parties are free to lead additional evidence, if any. As the matter is being sent back, the Industrial Court shall pass fresh orders as early as possible and in any case within a period of eight months from the date of communication of this order to it.

6. Writ Petition is disposed of accordingly. Rule is made absolute accordingly. No order as to costs. Civil Application for amendment is allowed.

JUDGE

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